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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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DANIEL S. POLLEY, P.A.  
1215 EAST BROWARD BOULEVARD  
FORT LAUDERDALE, FL 33301

EXAMINER

MENDOZA, MICHAEL G

ART UNIT PAPER NUMBER

3731

DATE MAILED: 06/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/759,743

Applicant(s)

PERA, IVO E.

Examiner

Michael G. Mendoza

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 18 April 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-6, 8-13 and 21-27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4, 13 and 23-27 is/are rejected.
- 7) ☒ Claim(s) 5, 6, 8-12 and 21 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☒ Certified copies of the priority documents have been received in Application No. 10/085,350.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Arguments***

1. Applicant's arguments with respect to claims have been considered but are moot in view of the new ground(s) of rejection. The newly amended claims have changed the scope of the claims requiring new search and consideration. A new grounds of rejection has been made in light on the new claim limitations.

### ***Terminal Disclaimer***

2. The terminal disclaimer filed on 18 April 2005 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of 6679255 has been reviewed and is accepted. The terminal disclaimer has been recorded.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-4, 13, and 22-27 are rejected under 35 U.S.C. 102(b) as being anticipated by Abiko et al. 4846168.

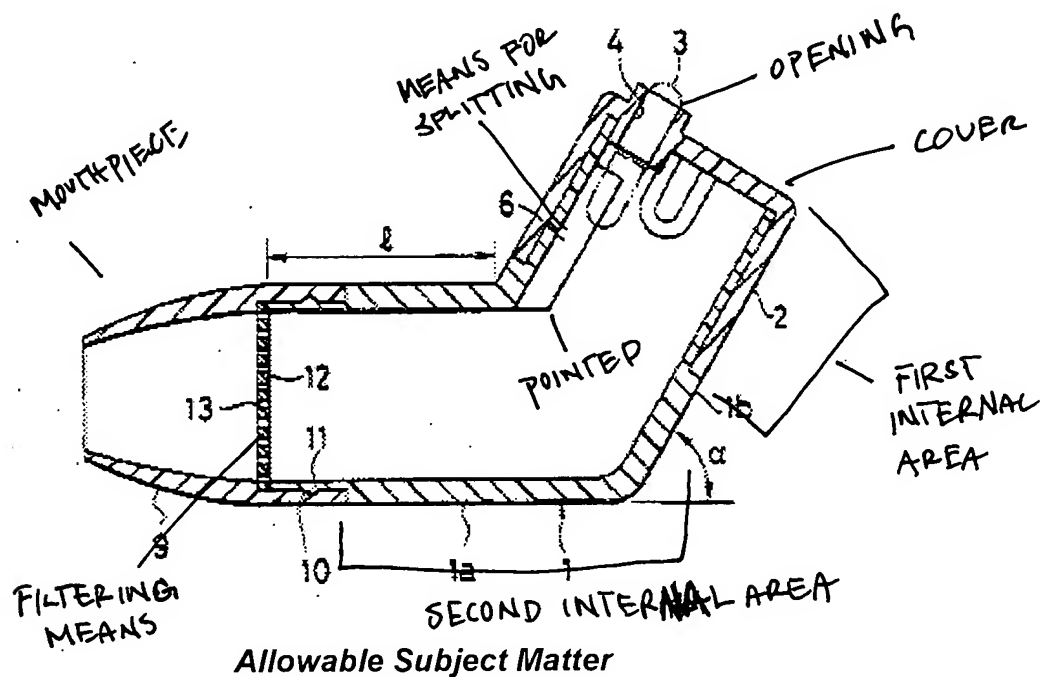
5. Abiko e al. teaches an inhaling device for dispersion through the respiratory tract a dose of powdered medicaments contained in a capsule, the device comprising: a body member having an externally accessible opening for positioning a capsule containing powdered medicaments at least partially within a first internal area within the

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body member; means for splitting the capsule to release the powdered medicaments into a second internal area of the body member; means for delivering to a user the released powdered medicament contained within the body member; wherein the first internal area is a compartment located inside a cover portion of the body member or inside one or more chambers within the body member, the compartment proximate the externally accessible opening into which the capsule is inserted and held therein during operation of incision of the capsule so as to aid in proper dispersion of the powdered medicaments into the second internal area; wherein the means for splitting the capsule is comprised of a cutting element, the cutting element comprised of a blade or pointed element (see fig.); wherein the operation of incision of the capsule and consequent inhalation of the powdered medicament by the user can be performed by holding the inhaling device with one hand, and rotating the cover with the other hand until the cutting element connected to the cover touches a lower part of the capsule and the device is placed in the user's mouth and the powdered drug inhaled; wherein the cutting element is made of plastic or other suitable material ensuring necessary stiffness, such that a sufficiently moderate force may split the capsule by means of the rotation of the cutting element (col. 4, lines 5-14); wherein the means for delivering the powdered medicaments includes a mouthpiece in communication with the second internal area from which the user can inhale the released powdered medicaments (see fig.); wherein the body member can be formed by two parts that can be assembled to each other; wherein the body is made of plastic material; further comprising means for filtering the powdered medicaments disposed within the body member (see fig.; col. 4, lines 5-14);

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wherein the means for filtering comprises a porous filter capable of holding any possible piece of the powdered medicament not completely pulverized (see fig.).



6. Claims 5, 6, 8-12, and 21 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

### **Conclusion**

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not

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mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

### ***Contacts***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael G. Mendoza whose telephone number is (571) 272-4698. The examiner can normally be reached on Mon.-Fri. 8:00 a.m. - 5:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anh Tuan Nguyen can be reached on (571) 272-44963. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



MM

  
GLENN K. DAWSCN  
PRIMARY EXAMINER